

STATE OF SOUTH CAROLINA

(Caption of Case)

IN RE:

Application of Act of Class

Relocation, Inc. for a Class E

Household Goods Certificate of

Public Convenience And Necessity

for Operation of Motor Vehicle

Carrier.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2007 - 097 - T

(Please type or print)

Submitted by: Benjamin P. Mustian

SC Bar Number: 68269

Telephone: 803-252-3300

Fax: 803-771-2410

Other:

Address: Post Office Box 8416

Columbia, SC 29202

Email: bmustian@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other:

INDUSTRY (Check one)

☐ Electric☐ Electric/Gas☐ Electric/Telecommunications☐ Electric/Water☐ Electric/Water/Telecom.☐ Electric/Water/Sewer☐ Gas☐ Railroad☐ Sewer☐ Telecommunications☒ Transportation☐ Water☐ Water/Sewer☐ Administrative Matter☐ Other:

NATURE OF ACTION (Check all that apply)

☐ Affidavit☐ Agreement☐ Answer☐ Appellate Review☐ Application☐ Brief☐ Certificate☐ Comments☐ Complaint☐ Consent Order☐ Discovery☐ Exhibit☐ Expedited Consideration☐ Interconnection Agreement☐ Interconnection Amendment☐ Late-Filed Exhibit☐ Letter☐ Memorandum☐ Motion☐ Objection☐ Petition☐ Petition for Reconsideration☐ Petition for Rulemaking☐ Petition for Rule to Show Cause☐ Petition to Intervene☐ Petition to Intervene Out of Time☐ Prefiled Testimony☐ Promotion☒ Proposed Order☐ Protest☐ Publisher's Affidavit☐ Report☐ Request☐ Request for Certification☐ Request for Investigation☐ Resale Agreement☐ Resale Amendment☐ Reservation Letter☐ Response☐ Response to Discovery☐ Return to Petition☐ Stipulation☐ Subpoena☐ Tariff☐ Other:

Print Form

Reset Form

18-1970

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
ELIZABETH ZECK*
RANDOLPH R. LOWELL
NOAH M. HICKS II**
BENJAMIN P. MUSTIAN
M. McMULLEN TAYLOR

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
SPECIAL COUNSEL

August 24, 2007

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN VA

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk / Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RECEIVED
2007 AUG 24 PM 4:30
SC PUBLIC SERVICE
COMMISSION

RE: Application of Act of Class Relocation, Incorporated for a Class E (Household Goods) Certificate of Public Convenience and Necessity for the Operation of a Motor Vehicle Carrier; Docket No. 2007-97-T

Dear Mr. Terreni:

Enclosed for filing is the original and ten (10) copies of Act of Class Relocation, Inc.'s Proposed Order in the above referenced docket. By copy of this letter, I am serving a copy of this document upon all parties of record and enclose a Certificate of Service to that effect. I would appreciate your acknowledging receipt of this document by date-stamping the extra copy that is enclosed and returning it to me via our courier.

If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/twb

Enclosures

cc: C. Lessie Hammonds, Esquire
John J. Pringle, Jr., Esquire

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-97-T

RECEIVED
2007 AUG 24 PM 4:30
SC PUBLIC SERVICE
COMMISSION

IN RE:

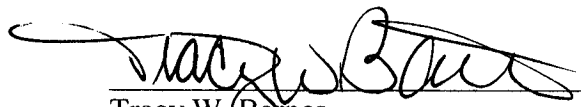
Application of Act of Class)
Relocation, Inc. for a Class E)
Household Goods Certificate of)
Public Convenience And Necessity)
for Operation of Motor Vehicle)
Carrier.)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of **Act of Class Relocation, Inc.'s Proposed Order** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

C. Lessie Hammonds, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202


Tracy W. Barnes

Columbia, South Carolina
This 24th day of August, 2007.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-97-T – ORDER NO. 2007-_____
_____, 2007

RECEIVED
2007 AUG 21 PM 4:31
SOUTH CAROLINA
PUBLIC SERVICE
COMMISSION

IN RE:

Application of Act of Class)
Relocation, Inc. for a Class E)
Household Goods Certificate of)
Public Convenience And Necessity)
for Operation of Motor Vehicle)
Carrier.)
_____)

**ORDER GRANTING CLASS E
CERTIFICATE**

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the Application of Act of Class Relocation, Inc. (“Act of Class”) for a Class E Certificate of Public Convenience and Necessity to transport household goods as defined by S.C. Code Ann. Regs. 103-210(1), between points and places in Cherokee, Lancaster, and York Counties, South Carolina.

The Commission’s Docketing Department instructed the Company to publish a Notice of Filing in newspapers of general circulation in the service area desired. The Notice of Filing, which was published as instructed, informed the public as to how to file pleadings to participate in the proceedings on the Application. A Petition to Intervene was filed by Roeder and Moore, LLC d/b/a Two Men and a Truck of Charlotte and Two Men and a Truck of Rock Hill (“Two Men and a Truck”).

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2006) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-590(A) (Supp. 2006) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

3. S.C. Code Ann. § 58-23-590(C) (Supp. 2006) provides:

The Office of Regulatory Staff must issue a common carrier certificate or contract carrier permit of public convenience and necessity, upon order of the commission, if the applicant proves to the commission that:

(1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and

(2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirement of public convenience and necessity. The determination that the proposed service is required by the public, convenience and necessity must be made by the commission on a case-by-case basis.

4. 26 S.C. Regs 103-102(1)(Supp. 2006) defines "Certificate of PC&N" as the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall

be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

5. 26 S.C. Regs. 103-102(5) (Supp. 2006) defines “Common Carrier by Motor Vehicle” as “any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976.”

6. A “Class E Motor Carrier” is defined in 26 S.C. Regs. 103-114 (Supp. 2006) as “a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

7. 26 S.C. Code Regs. 103-133 (Supp. 2006) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

- (1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.² If the

¹ 26 S.C. Code Regs. 103-102(15) defines “person” as “any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.”

² By Commission Order No. 1999-654, dated September 15, 1999, (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024, dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision

Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

EVIDENCE OF RECORD

The hearing on the Application was held on August 14, 2007, at 2:30 p.m. in the offices of the Commission. The Honorable G. O'Neal Hamilton, Chairman, presided. Act of Class was represented by Benjamin P. Mustian, Esquire. The Office of Regulatory Staff ("ORS") was

from Order No. 1999-654 to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

represented by C. Lessie Hammonds, Esquire, and Shealy Boland Reibold, Esquire. Two Men and a Truck were represented by John J. Pringle, Jr., Esquire.

Mr. Steve Sullivan testified on behalf of the Applicant Act of Class. Mr. Sullivan testified that he is a part owner and the President of Act of Class. He testified that Act of Class has operated a moving and storage business in North Carolina for over nine years and currently possesses authority to conduct intrastate moves in North Carolina and interstate moves. His testimony demonstrated that Act of Class currently conducts intrastate moves primarily in the Charlotte, North Carolina area and additionally operates as an agent for Stevens Van Lines, Inc. conducting interstate moves. Mr. Sullivan further testified that has personally been involved in the moving business for over fifteen years and therefore has the experience and the ability to operate a successful moving and storage business providing primarily residential moving services in the proposed service area in South Carolina. His testimony indicated that Act of Class is operating a solvent and profitable business, is not subject to any outstanding judgments, and is in good standing with both the North Carolina Utilities Commission and the United States Department of Transportation. Mr. Sullivan stated that he was familiar with and agreed to operate Act of Class's business in compliance with all statutes and regulations, including safety regulations in South Carolina. He additionally provided evidence of Act of Class's fitness, willingness, and ability to provide the services for which it seeks a Certificate of Public Convenience and Necessity by describing the Company's incorporation, insurance, and equipment.

Mr. Sullivan further provided extensive testimony regarding the population and number of moves within the three county area in which Act of Class is seeking authority. He provided testimony that, because of the proximity of its headquarters to this area, Act of Class had

received requests to provide moving services in the proposed service area for several years. Mr. Sullivan indicated that the Company had often turned away customers to conduct moves in this service area due to their lack of authority. Further, based upon his knowledge of the Charlotte metropolitan area and his considerable experience in the moving business, Mr. Sullivan stated that the proposed service area was experiencing significant growth in population and continued strength in its housing market and that there is a need for an additional intrastate household goods mover in this territory.

Mr. Butch Brindel also testified for the Applicant. Mr. Brindel serves as the Chief Executive Officer of the Piedmont Regional Association of Realtors based in Rock Hill, South Carolina. Mr. Brindel has been involved in the real estate market for a number of years and has extensive experience in this field. Mr. Brindel provided testimony to the Commission that the real estate market in the Piedmont Region is maintaining, if not increasing, its level of housing sales. Mr. Brindel testified that this territory is the only real estate market in South Carolina which is experiencing robust home sales and has not experienced a down turn in the real estate market. Mr. Brindel further testified that York County was the fourth fastest growing county in South Carolina and that he was aware of several large new subdivisions presently or soon to be under construction. Further, Mr. Brindel stated that the number of home permits being issued in this territory had remained high. Based upon his knowledge and experience, Mr. Brindel testified that the state of the housing market in this area was such that persons continue to make moves in this region.

Mr. Tripp Moore testified on behalf of the Intervenor. Mr. Moore stated that he believed the present need for household goods movers was being met. Mr. Moore agreed with Mr. Brindel that the service area requested by the Applicant was growing and that the housing market

was performing well; however, he stated that it was his belief that the moves being made were only interstate in nature and were not related to intrastate moves within these three counties.

Mr. L. George Parker testified on behalf of the Office of Regulatory Staff. Mr. Parker noted that he visited the Act of Class place of business and inspected the moving vehicles and equipment. Mr. Parker took pictures of the Act of Class equipment and verified that the equipment, including the vehicles, were in safe and good operating order. Mr. Parker further testified that the Applicant had provided a safety certification which, *inter alia*, certifies that it is familiar with U.S.D.O.T. regulations relating to safe operation of commercial vehicles and that it has in place a system for ensuring compliance with Federal Motor Carrier Safety Regulations (“FMCSR”); that it has in place a driver safety/orientation program; that it is familiar with driver qualifications and has in place a system for overseeing driver qualification requirements; and that it is in compliance with the Controlled Substance and Alcohol Use and Testing as Stated in the FMCSR. Mr. Parker further testified that, based on his inspection, the Applicant appeared fit, willing, and able to move household goods.

S.C. Code Ann. 58-23-590(C)(Supp. 2006) states that the Commission shall issue a common carrier certificate of public convenience and necessity if the applicant proves to the Commission that: (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of the chapter and the Commission’s regulations and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity. We would note that we have waived the “shipper witness” rule to show public convenience and necessity found in 26 S.C. Code Regs. 103-133 (Supp. 2006) for applicants seeking authority in three contiguous counties. In the present case, the Applicant is seeking such limited authority. While the Applicant did not present a shipper

witness in this matter, the Applicant exceeded the evidentiary requirements by presenting testimony from Mr. Butch Brindel who provided information supporting the Applicant's assertion that the area was growing and that the residents in the area were making moves within the requested service area. Further, Mr. Sullivan stated that, owing to this continued growth and strength in the real estate market, the proposed service area supported the need for additional household goods movers. We find the evidence of the present state of public convenience and necessity provided by the Applicant to be credible.

Based upon the record before the Commission and the statutory requirements, along with the guidelines contained in the Commission's regulations, we conclude that the Applicant has demonstrated that he is fit, willing, and able to operate as a household goods mover between points and places in Cherokee, Lancaster and York Counties pursuant to S.C. Code Ann. § 58-23-330 (Supp.2006) and 26 S.C. Code Ann. Regs. 103-133 (Supp.2006), and that the public convenience and necessity is not already being served by existing authorized service. Further, we find there is sufficient evidence to grant the Application and therefore grant to Act of Class a Class E Certificate of Public Convenience and necessity for the movement of household goods as defined in R. 103-210(1) between points and places in Cherokee, Lancaster, and York Counties, South Carolina. This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Act of Class Relocation, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for the Applicant to transport household goods between points and places in Cherokee, Lancaster and York Counties.

2. The Company shall file with the Office of Regulatory Staff the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and by 26 S.C. Code Ann. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Code Ann. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Regs. Vol. 26 (1976), as amended, a Certificate shall be issued by the Office of Regulatory Staff authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure of the Applicant either (1) to complete the certification process by complying with the Office of Regulatory Staff requirements of causing to be filed with the Commission proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, may result in the authorization approved in the Order being revoked.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

G. O'Neal Hamilton, Chairman

ATTEST:

C. Robert Moseley, Vice Chairman

(SEAL)